

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

PROCEEDINGS

On April 9, 2013, Plaintiff Eric Paul Stevens ("Plaintiff") applied for supplemental security income based on a disabling condition beginning November 29, 2009. (AR 194). On August 20, 2014, Administrative Law Judge ("ALJ") Sally C. Reason heard testimony from Plaintiff. (AR 37-47). A supplemental hearing was held on February 23, 2015, and the ALJ heard testimony from medical expert ("M.E.") Lynne Jahnke and vocational expert Ronald Hatakeyama.

1 (AR 48-59). On February 25, 2015, the ALJ denied Plaintiff benefits
2 in a written decision. (AR 21-30). The Appeals Council denied
3 review of the ALJ's decision. (AR 1-3).

4

5 On August 24, 2015, Plaintiff filed a Complaint pursuant to
6 42 U.S.C. §§ 405(g) and 1383(c)(3) alleging that the Social Security
7 Administration erred in denying benefits. (Docket Entry No. 1). On
8 January 13, 2016, Defendant filed an Answer to the Complaint, (Docket
9 Entry No. 14), and the Certified Administrative Record ("AR"),
10 (Docket Entry No. 15). The parties have consented to proceed before
11 a United States Magistrate Judge. (Docket Entry Nos. 10, 12). On
12 March 25, 2016, the parties filed a Joint Stipulation ("Joint Stip.")
13 setting forth their respective positions on Plaintiff's claims.
14 (Docket Entry No. 17).

15

16 For the reasons discussed below, the decision of the
17 Administrative Law Judge is AFFIRMED.

18

19 **SUMMARY OF ALJ'S DECISION**

20

21 The ALJ applied the five-step process in evaluating Plaintiff's
22 case. (AR 21-23). At step one, the ALJ determined that Plaintiff
23 had not engaged in substantial gainful activity after the date of his
24 application. (AR 23). At step two, the ALJ found that Plaintiff's
25 severe impairments included degenerative disc disease of the lumbar
26 spinal area, diverticulosis, hepatitis C, ventral hernia, and
27 obesity. (AR 23). At step three, the ALJ found that Plaintiff's
28

1 impairments did not meet or equal a listing found in 20 C.F.R. Part
2 404, Subpart P, Appendix 1. (AR 23-24).

3
4 Before proceeding to step four, the ALJ found that Plaintiff had
5 the residual functional capacity ("RFC") to "lift and/or carry twenty
6 pounds occasionally and ten pounds frequently, stand and/or walk up
7 to two hours in an eight-hour workday (no more than thirty minutes
8 continuously), and sit without restriction, with no climbing ladders,
9 ropes, or scaffolds, no more than occasional postural activities
10 (i.e., balancing, stooping, kneeling, crouching, crawling, or
11 climbing ramps or stairs); no exposure to unprotected heights; and no
12 concentrated exposure to vibrations or extreme cold or heat." (AR
13 24). The ALJ also determined that Plaintiff required "the ability to
14 take a standing break once per hour (approximately five minutes in
15 duration) at his workstation." (AR 24). In formulating an RFC, the
16 ALJ summarized medical evidence including a July 2011 opinion by
17 examining physician Karl Epstein, M.D. (AR 25, 27-28). The ALJ gave
18 Dr. Epstein's opinion "significant probative weight," observing that
19 Dr. Epstein had stated that Plaintiff could "work with proper
20 motivation including[] sitting, standing and walking no greater than
21 [two] hours." (AR 28) (second alteration in original).

22
23 At steps four and five, the ALJ determined that Plaintiff had no
24 past relevant work but could work as a telephone information clerk or
25 a lens inserter, optical goods industry. (AR 28-30). Accordingly,
26 the ALJ determined that Plaintiff was not disabled within the meaning
27 of the Social Security Act. (AR 30).

STANDARD OF REVIEW

This court reviews the Administration's decision to determine if the decision is free of legal error and supported by substantial evidence. See Brewes v. Commissioner of Soc. Sec. Admin., 682 F.3d 1157, 1161 (9th Cir. 2012). "Substantial evidence" is more than a mere scintilla, but less than a preponderance. Garrison v. Colvin, 759 F.3d 995, 1009 (9th Cir. 2014). To determine whether substantial evidence supports a finding, "a court must consider the record as a whole, weighing both evidence that supports and evidence that detracts from the [Commissioner's] conclusion." Aukland v. Massanari, 257 F.3d 1033, 1035 (9th Cir. 2001) (internal quotation omitted). As a result, "[i]f the evidence can support either affirming or reversing the ALJ's conclusion, [a court] may not substitute [its] judgment for that of the ALJ." Robbins v. Soc. Sec. Admin., 466 F.3d 880, 882 (9th Cir. 2006).

PLAINTIFF'S CONTENTIONS

Plaintiff's contends that Dr. Epstein assessed limitations inconsistent with Plaintiff performing full time work, and the ALJ was therefore required to either provide specific and legitimate reasons for partially rejecting Dr. Epstein's opinion or fully credit the opinion and find Plaintiff disabled. (See Joint Stip. at 5-8).

\\ \\ \\ \\

DISCUSSION

A. The ALJ Properly Evaluated Dr. Epstein's Opinion

Plaintiff argues that Dr. Epstein's opinion, which limited Plaintiff to "sitting, standing and walking no greater than [two] hours," can be read to either limit Plaintiff's sitting, standing, and walking to a "combined total time" of two hours or to limit these activities to two hours each, for a combined total of six hours. (Joint Stip. at 5-6). Because either of these interpretations limits Plaintiff's sitting, standing, and walking to less than eight hours per day, Plaintiff contends that Dr. Epstein assessed limitations that are inconsistent with full-time work. (*Id.* at 6). Plaintiff maintains that the ALJ was required to either provide specific, legitimate reasons for rejecting Dr. Epstein's opinion or to accept the opinion in full and find Plaintiff disabled. (*Id.* at 6-7).

An ALJ must take into account all medical opinions of record. 20 C.F.R. §§ 404.1527(b), 416.927(b). "Generally, a treating physician's opinion carries more weight than an examining physician's, and an examining physician's opinion carries more weight than a reviewing physician's." Holohan v. Massanari, 246 F.3d 1195, 1202 (9th Cir. 2001); see also Lester v. Chater, 81 F.3d 821, 830 (9th Cir. 1995). When a treating or examining physician's opinion is not contradicted by another physician, it may be rejected only for "clear and convincing" reasons. Lester, 81 F.3d at 830. When a treating or examining physician's opinion is contradicted by another doctor, it may only be rejected if the ALJ provides "specific and

1 "legitimate" reasons supported by substantial evidence in the record.
2 Id. at 830-31; see also Ryan v. Comm'r of Soc. Sec., 528 F.3d 1194,
3 1198 (9th Cir. 2008).

4

5 On July 25, 2011, Plaintiff underwent a consultative physical
6 examination before Dr. Epstein. (AR 477-78). Plaintiff complained
7 of flat foot, compressed vertebrae and ventral hernia, obesity,
8 hepatitis C, and pain while sitting. (AR 477). Dr. Epstein
9 performed a physical examination, noting "tenderness over T12 and L1"
10 but "no significant pain over the lumbar spine." (AR 477). Dr.
11 Epstein also observed "sacroiliac joint pain with functional range of
12 motion." (AR 477). Dr. Epstein diagnosed Plaintiff with obesity and
13 a history of hepatitis C. (AR 477). Under "Discussion," Dr. Epstein
14 wrote that Plaintiff "should be able to work with proper motivation
15 including sitting, standing, and walking no greater than [two]
16 hours." (AR 478).

17

18 During the supplemental ALJ hearing, the M.E. testified that she
19 had reviewed Plaintiff's medical records and opined that Plaintiff's
20 impairments included chronic low back pain with degenerative disc
21 disease. (AR 52). Based on her review, the M.E. concluded that
22 Plaintiff had "no limitations to sitting," although she stated that
23 it would be "nice" to afford Plaintiff the opportunity to stand for
24 less than five minutes once per hour to "stretch his back out" and
25 alleviate his low back pain. (AR 54). The M.E. otherwise
26 recommended limitations consistent with those ultimately assessed by
27 the ALJ. (Compare AR 24 with AR 54).

1 The ALJ discussed the medical evidence and assigned weight to
2 the opinions of Dr. Epstein and the M.E. in the following excerpts:
3

4 The record shows that [Plaintiff] has a history of back
5 pain. In July 2011, [Dr. Epstein] performed a consultative
6 orthopedic evaluation at the request of the Social Security
7 Administration. [Plaintiff] complained to [Dr. Epstein] of
8 "compressed vertebrae," pain with sitting, and flat feet.
9 On physical examination, [Dr. Epstein] observed tenderness
10 "over T12 and L1," "sacroiliac joint pain," and pain with
11 straight leg raise testing.

12

13 In March 2013, [Plaintiff] visited the emergency
14 departments at Northridge Medical Hospital ("NHMC") and
15 Providence Tarzana Medical Center ("PTMC") with complaints
16 of low back pain. [Plaintiff] told the attending physician
17 at NHMC he experienced back pain after performing yard work
18 and daily chores. He told the attending physicians at both
19 facility [sic] his back pain radiated to his lower
20 extremities. On physical examination, the attending
21 physician at NHMC observed a limp and "mild" weakness in
22 the right lower extremity.

23

24 An X-ray study of the lumbar spinal area performed in March
25 2014 revealed evidence of "moderate" degenerative changes
26 at L5-S1, including disc space narrowing. An MRI study of
27 the lumbar spinal area performed in March 2014 revealed
28 evidence of multilevel degenerative changes, including disc

1 bulges; loss of disc height; facet arthopathy; and
2 foraminal stenosis.

3
4 Between 2014 and 2015, [Plaintiff] complained to treatment
5 providers at Medicina Familiar Medical Group ("MFMG") of
6 back pain and "sciatica." [. . .]

7
8 [T]he objective medical evidence does not support
9 [Plaintiff's] allegations. The aforementioned imaging
10 studies of the spine revealed evidence of degenerative
11 changes. They did not reveal evidence of fracture,
12 subluxation, nerve root impingement, or spinal canal
13 stenosis. The record does not contain neurodiagnostic
14 studies of [Plaintiff's] extremities to support his
15 complaints of radicular symptoms. [. . .]

16
17 Further, the clinical findings contained in the record
18 largely were unremarkable. [Dr. Epstein] observed evidence
19 of tenderness at various points of the spine and pain with
20 straight leg raise testing. He also observed "functional
21 range of motion of the sacroiliac joint," "adequate"
22 lateral tilt and rotation, and a healed ventral scar. [Dr.
23 Epstein] indicated he did not observe evidence of
24 "significant pain over the lumbar spine." In March 2013,
25 the attending physician at PTMC observed "minimal"
26 tenderness at the lumbar spinal area, negative straight leg
27 raise tests, normal motor strength and reflexes in the
28 extremities, and normal gait, despite [Plaintiff's]

complaints of back pain and radicular symptoms. In August 2014, [Plaintiff] visited the emergency department at West Hills Hospital and Medical Center with complaints of back pain and spasm. On physical examination, the attending physician observed normal breath sounds, regular heart rate and rhythm, full range of motion in the spine and extremities (without tenderness), and normal motor strength and sensation in the extremities. [Plaintiff's] treatment providers at MFMG observed regular heart rate and rhythm; clear lungs; normal peripheral pulses; normal bowel sounds; symmetrical abdomen (without masses, guarding, or hepatosplenomegaly); normal range of motion in the spine and extremities; negative straight leg raise tests; and normal motor strength and sensation in the extremities. Cumulatively, the objective medical evidence does not support finding that [Plaintiff] is unable to perform basic work activities. [. . .]

In addition to the objective medical evidence, the [ALJ] has considered statements from treating, examining, and non-examining physicians in determining [Plaintiff's] residual functional capacity, as required by the regulations. [The M.E.] opined [Plaintiff] could lift and/or carry twenty pounds occasionally and ten pounds frequently, stand and/or walk up to two hours in an eight-hour workday (no more than thirty minutes continuously), and sit without restriction, with no climbing ladders, ropes, or scaffolds, no more than occasional balancing,

1 stooping, kneeling, crouching, crawling, or climbing ramps
2 or stairs; no exposure to unprotected heights; and no
3 concentrated exposure to vibrations or extreme cold or
4 heat. [The M.E.] opined [Plaintiff] required the ability
5 to take a standing break once per hour (approximately five
6 minutes in duration) at his workstation. This opinion is
7 deserving of significant probative weight because it is
8 supported by the objective medical evidence, which shows a
9 history of complaints of back pain and abdominal pain, as
10 well as anatomical abnormalities of the spine and abdomen,
11 but otherwise mostly normal cardiovascular,
12 musculoskeletal, neurological, and respiratory functioning.
13 [The M.E.] had the opportunity to review and consider the
14 relevant documentary evidence, which lends their [sic]
15 opinions additional probative weight.

16
17 Based on his clinical findings and observations, [Dr.
18 Epstein] opined [Plaintiff] could "work with proper
19 motivation including[] sitting, standing and walking no
20 greater than [two] hours." With respect to [Plaintiff's]
21 ability to stand and/or walk, this opinion is deserving of
22 significant probative weight because it is consistent with
23 the other evidence of record, including the objective
24 medical evidence, as discussed above, and the opinion of
25 [the M.E.], which the [ALJ] has determined is deserving of
26 significant probative weight.

27
28 (AR 25, 27-28 (citations omitted)).

1 The ALJ did not err in evaluating Dr. Epstein's opinion. First,
2 as Plaintiff points out, the limitations assessed in Dr. Epstein's
3 opinion were somewhat ambiguous and vague. (Joint Stip. at 5-6).
4 Dr. Epstein's clearest statement regarding Plaintiff's disability
5 status, however, was that Plaintiff "should be able to work with
6 proper motivation." (AR 478). This opinion was offered by a
7 consultative examiner conducting a physical examination for the
8 specific purpose of evaluating the severity of Plaintiff's disability
9 and his ability to work. (AR 477-78). To the extent that Dr.
10 Epstein's report was ambiguous, it was the ALJ's prerogative to
11 resolve this ambiguity, Tommasetti v. Astrue, 533 F.3d 1035, 1041-42
12 (9th Cir. 2008), and it is incongruous to suggest, without meaningful
13 explanation of the apparent inconsistency, that fully crediting Dr.
14 Epstein's opinion that Plaintiff "should be able to work," (AR 478),
15 actually requires a finding that Plaintiff is fully disabled.

16
17 Moreover, the ALJ credited Dr. Epstein's assessment "[w]ith
18 respect to [Plaintiff's] ability to stand and/or walk" because it was
19 "consistent with the other evidence of record, including the
20 objective medical evidence . . . and the opinion of [the M.E.]." (AR
21 28); see also Thomas v. Barnhart, 278 F.3d 947, 957 (9th Cir. 2002)
22 ("The opinions of non-treating or non-examining physicians may also
23 serve as substantial evidence when the opinions are consistent with
24 independent clinical findings or other evidence in the record.").
25 The ALJ thus implicitly rejected limitations on Plaintiff's ability
26 to sit as lacking support in the medical evidence and inconsistent
27 with the M.E.'s opinion. See Magellanes v. Bowen, 881 F.2d 747, 755
28 (9th Cir. 1989) ("It is true that the ALJ did not recite the magic

1 words, 'I reject Dr. Fox's opinion about the onset date because....'
2 But our cases do not require such an incantation. As a reviewing
3 court, we are not deprived of our faculties for drawing specific and
4 legitimate inferences from the ALJ's opinion.").

5

6 The Ninth Circuit has disapproved of vague or unsupported
7 conclusions that a medical opinion is credited to the degree that it
8 is consistent with other opinions or objective medical evidence. Cf.
9 Embrey v. Bowen, 849 F.2d 418, 421 (9th Cir. 1988) ("To say that
10 medical opinions are not supported by sufficient objective findings
11 or are contrary to the preponderant conclusions mandated by the
12 objective findings does not achieve the level of specificity our
13 prior cases have required, even when the objective factors are listed
14 seriatim."). However, in this case the ALJ's conclusion was preceded
15 and supported by an extensive analysis of the medical evidence of
16 record, including the M.E.'s opinion. (AR 25-28). It was during
17 this analysis that the ALJ determined that "objective medical
18 evidence does not support the finding that [Plaintiff] is unable to
19 perform basis work activities" and that "the clinical findings
20 contained in the record largely were unremarkable." (AR 27). These
21 determinations were not unreasonable and, with the exception of
22 Plaintiff's specific challenges to this summary discussed supra,
23 Plaintiff acknowledges that the ALJ's summary was fair and accurate.
24 (Joint Stip. at 4). Therefore, the ALJ did not err in evaluating Dr.
25 Epstein's opinion. See Morgan v. Commissioner of Soc. Sec., 169 F.3d
26 595, 600, 602 (9th Cir. 1999) ("Opinions of a nonexamining,
27 testifying medical advisor may serve as substantial evidence when
28 they are supported by other evidence in the record and are consistent

1 with it. . . . [W]e have consistently upheld the Commissioner's
2 rejection of the opinion of a treating or examining physician, based
3 in part on the testimony of a nontreating, nonexamining medical
4 advisor." (emphasis in original)).

5

6 **CONCLUSION**

7

8 For the foregoing reasons, the decision of the Administrative
9 Law Judge is AFFIRMED.

10

11 LET JUDGMENT BE ENTERED ACCORDINGLY.

12

13 Dated: July 28, 2016

14 /s/

15 ALKA SAGAR

16 UNITED STATES MAGISTRATE JUDGE

17

18

19

20

21

22

23

24

25

26

27

28